



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 6281-02
26 December 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the general discharge issued on 21 July 1977.

2. The Board, consisting of Mr. Leeman, Mr. Beckett, and Ms. Suiter, reviewed Petitioner's allegations of error and injustice on 26 November 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 10 May 1967 at age 19. At that time, he had completed nine years of formal education and attained test scores that placed him in Mental Group IV.

d. Petitioner served in Vietnam from 3 December 1967 to 16 June 1968 and from 5 April to 25 May 1969. He was twice wounded in action and received two Purple Hearts. The record indicates

that both of Petitioner's periods of Vietnam service were terminated due to hospitalization resulting from his wounds.

e. The record reflects that Petitioner received three nonjudicial punishments and was convicted by a summary court-martial. The offenses included unauthorized absences totalling 87 days. None of the foregoing misconduct occurred while Petitioner was in Vietnam.

f. On 22 July 1970 Petitioner submitted a written request for an undesirable discharge in order to avoid trial by court-martial for an unauthorized absence of 122 days. His record reflects that prior to submitting his request for discharge he consulted with legal counsel and was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, his request was granted. On 14 August 1970 Petitioner received an undesirable discharge.

g. On 21 July 1977 the Naval Discharge Review Board (NDRB), acting under the provisions of the Special Discharge Review Program (SDRP) and 10 USC 1553, the enabling statute of the NDRB, changed Petitioner's characterization of service to general by reason of good of the service to escape trial. In Public Law 95-126 Congress withdrew veteran's benefits from those individuals whose discharges were recharacterized under the provisions of the SDRP. In this regard, benefits would only be granted if the discharges were recharacterized using traditional standards by the discharge review boards or the boards for correction of military records. The NDRB then re-reviewed Petitioner's case and decline to take any further favorable action.

h. Although the action of the NDRB under SDRP does not entitle Petitioner to receive benefits administered by the Department of Veterans Affairs (DVA), he would be entitled to such benefits if this Board confirms the SDRP action under the provisions of its enabling statute, 10 USC 1552.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board initially notes Petitioner's youth and immaturity, limited education and low test scores. The Board further notes that although Petitioner committed numerous offenses, he served in Vietnam, was twice wounded in action, and committed no misconduct while serving in this combat zone. The Board further notes the recharacterization of service by the NDRB under the SDRP. However, this action does not entitle Petitioner to veteran's benefits. In consideration of the foregoing, the Board concludes that no useful purpose is served by continuing to deny Petitioner veteran's benefits. Although the Board cannot justify further recharacterization of Petitioner's service to

fully honorable, the Board does believe that the record warrants confirmation of his general discharge in order that he may be granted such benefits.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that his discharge of 21 June 1977 has been characterized as a general discharge pursuant to the provisions of 10 USC 1552 vice 10 USC 1553.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 17 July 2002.

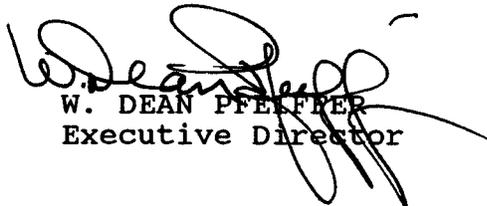
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director